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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KENNETH BARTON,

Plaintiff and Respondent,

v.

RPOST INTERNATIONAL, RPOST INC.,  
ZAFAR KAHN, TERRANCE TOMKOW  
& HENRI ISENBERG,

Defendants and Appellants.

B214665

(Los Angeles County  
Super. Ct. No. YC051312)

APPEAL from a judgment of the Superior Court of Los Angeles County, Andrew C. Kauffman, Judge. Dismissed.

Ben-Zvi & Associates and Henry Ben-Zvi, for Defendants and Appellants.

McGarrigle, Kenney & Zampiello and Michael J. Kenney for Plaintiff and Respondent.

Plaintiff, Kenneth Barton, purports to appeal from a post-judgment order denying attorney fees incurred in a prior appeal. (*Barton v. Khan* (Dec. 13, 2007, B190428) [nonpub. opn.].) The prior opinion reversed a demurrer dismissal and the case is currently set for trial on January 25, 2010. Tentatively, it did not appear we had jurisdiction because no final appealable judgment had been entered. Because such an order did not appear to be appealable, we issued an order to show cause concerning possible dismissal of the appeal. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.) The present matter is not appealable. (Code Civ. Proc., § 906; *Barnes v. Litton Systems, Inc.* (1994) 28 Cal.App.4th 681, 685; *Nimmagadda v. Krishnamurthy* (1992) 3 Cal.App.4th 1505, 1509-1510.)

The appeal is dismissed without prejudice. (Code Civ. Proc., § 913.) All parties are to bear their own costs incurred on appeal.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.